

**Texas Civil Commitment-Outpatient Sexually Violent Predator Treatment Program (OSVPTP)**  
**Health & Safety Code, Chapter 841**

**Texas Legislative History**

In 1995, the 74th Texas Legislature first contemplated the sexually violent predator act with HB 595 by Representative Greenberg, Hochberg, and Danburg et. al. but the bill died in the House Criminal Jurisprudence committee.

In 1997, the 75th Legislature considered SB 77 by Senator John Whitmire (Houston) et. al. and authored by Senator Florence Shapiro (Plano) which would provide for the involuntary commitment of sexually violent predators. The measure died in committee, partly because of potential constitutional issues concerning similar laws and lack of appropriations (\$10.4 million in renovations for a 96 bed facility, \$3 million in assessments per year, \$78,000 per SVP per year for providing care, treatment, security, food, laundry, managerial support, and administrative staff). A key question appeared to be whether it was constitutional to involuntarily commit people after they had completed criminal sentences. The Legislature directed an interim committee to study SVP laws and the need for the law in Texas.

In 1999, Texas Senate Bill 365 expanded the Council on Sex Offender Treatment's (CSOT) duties to include the administration and implementation of the OSVPTP, the first outpatient civil commitment program in the United States.

In 2003, the 78th Legislature SB 871 by Senator Florence Shapiro amended Health & Safety Code, Chapter 841 to require the court to appoint an attorney if the State Counsel For Offenders (SCFO) cannot represent the SVP. The bill added an additional member from the CSOT to the Multi-disciplinary Team (MDT). It increased the date from 60 days to 270th day the trial shall be conducted after filing a petition and added the effect of subsequent convictions, judgments, or commitments suspends the requirements under the chapter. The bill added that behavioral abnormality is not due to unsound mind for purposes of Section 15-a, Article I, Texas Constitution, increased cost not to exceed \$2,500 for the trial, and added the judicial requirements of not only participation but compliance with treatment, tampering with GPS, and possession or use of alcohol, inhalants, or a controlled substance.

In 2005, the 79th Legislature SB 912 by Senator Florence Shapiro amended Health & Safety Code, Chapter 814 to add sexually violent offenses to include sexually motivated murder and capital murder. The bill transferred some of the Global Positioning Satellite (GPS) tracking responsibilities to case managers from the Department of Public Safety, required that the SVP shall reside in a facility under contract with CSOT and allowed SVPs to be housed in Mental Health/Mental Retardation facilities. Additionally, under the HB 2292, the Texas Department of Health and the CSOT were consolidated into the Health and Human Services Commission umbrella in the Department of State Health Services.

In 2007, the 80th Legislature HB 2034 by Representative Kirk England was amended with SB 1198 by Senator Florence Shapiro) amended Health & Safety Code, Chapter 814 so a judge is not subject to an objection other than an objection made under Section 74.053(d) of the Government Code and clarifies SPU civil division. The bill allowed the local prosecuting attorney to request SPU assist in the violation

trial and that failure to comply with civil commitment may be prosecuted in the county of violation or Montgomery County. House Bill 8 by Representative Debbie Riddle required SVPs to pay for the GPS tracking if the SVP is not indigent. SB 1951 by Senator Wentworth created of 435th Judicial District Court in Montgomery County for civil commitment proceedings under Chapter 841, Health & Safety Code and criminal cases involving 841.085, Health & Safety Code, and Article 62.203, Code of Criminal Procedures. SB 1741 (by Senator Florence Shapiro) filed the bill to create a new state agency to perform the functions relating to the outpatient sexually violent predator treatment program that were performed by the Council on Sex Offender Treatment (CSOT). The bill died on the House floor prior to final readings.

In 2009, the 81st Legislature HB 2917 by Representative Jim McReynolds/Senator Florence Shapiro) amended Government Code 411.110 to obtain criminal history records of current and potential employees.

In 2011, the 82nd Legislature Senator Florence Shapiro re-filed the bill (SB 166 and HB 236 by Representative Jerry Madden) to create a new state agency to perform the functions relating to the outpatient sexually violent predator treatment program. The bill amended the Government Code by adding a new Chapter 420A titled "Office of Violent Sex Offender Management". The bill was amended on the floor of the House of Representatives to administrative attach the new agency to the Department of State Health Services solely for administrative support as necessary to carry out the purpose of the OVSOM.

Additionally, the bill amended Health & Safety Code, Chapter 841 regarding the composition of the MDT to remove one member of the CSOT and one member from DSHS-Mental Health to add two members of OVSOM; requiring the person to comply with all written requirements imposed by the case manager or the office; increased the compensation for treatment providers not to exceed \$10,000; allows the office to enter into a memorandum of understanding with both DPS and local law enforcement for criminal complaints, warrants, apprehension, and arrest of the person; requires the office to provide GPS tracking in Travis, Bexar, and El Paso counties; and requires a correctional facility or secure correctional facility to notify the case manager prior to releasing the person. On June 17, 2011 the bill was signed by Governor Rick Perry with the effective date of September 1, 2011.

### **Purpose**

The purpose of OSVPTP is established in Health & Safety Code §841.001, "The legislature finds that a small but extremely dangerous group of sexually violent predators exists and that those predators have a behavioral abnormality that is not amenable to traditional mental illness treatment modalities and that makes the predators likely to engage in repeated predatory acts of sexual violence. The legislature finds that the existing involuntary commitment provisions of Subtitle C, Title 7, are inadequate to address the risk of repeated predatory behavior that sexually violent predators pose to society. The legislature further finds that treatment modalities for sexually violent predators are different from the traditional treatment modalities for persons appropriate for involuntary commitment under Subtitle C,

Title 7. Thus, the legislature finds that a civil commitment procedure for the long-term supervision and treatment of sexually violent predators is necessary and in the interest of the state.”

### **The Process**

Sixteen months prior to release from prison, Texas Department of Criminal Justice (TDCJ) identifies all sex offenders who have more than one sexually violent offense. Those cases are reviewed by a multidisciplinary team (MDT), which consists of representatives from the OVSOM, CSOT, TDCJ, TDCJ-Victim Services, DSHS Mental Health Division, and the Department of Public Safety (DPS). The MDT by statute:

1. assesses whether the person is a repeat sexually violent offender;
2. determines whether the person is likely to commit a sexually violent offense after release or discharge; and
3. recommends the person for an assessment for a behavioral abnormality.

Multidisciplinary Team reviews an average of 35 cases per month.

If referred by the MDT, TDCJ then contracts with an expert to conduct the initial assessment, which includes a clinical interview, psychological testing, review of the risk assessments, institutional records, and all relevant medical and psychological records and reports. If a behavioral abnormality is identified, the case is referred to the Special Prosecution Unit (SPU) to determine whether to file a petition for a trial to seek a commitment of the individual. The SPU is responsible for initiating and pursuing a civil commitment.

If the SPU files a petition alleging a predator status, the State Counsel for Offenders (SCFO) is notified and provides representation in the civil commitment proceeding. If SCFO is unable to represent, the court shall appoint other counsel.

All civil commitment trials are held in Montgomery County, Texas (435th District Court). A judge or twelve person jury must unanimously answer “yes” beyond a reasonable doubt to the following questions:

1. Is the person a repeat sexually violent offender?
2. Does the person suffer from a behavioral abnormality that makes him/her likely to engage in a predatory act of sexual violence?

If the judge or jury unanimously responds “yes” to both questions, the person is ordered into the OSVPTP program upon release from prison.

After the trial and prior to entering the program, the court coordinator identifies the county of residence for the judicial order. The court coordinator coordinates transportation and residential placement for the SVP. The court coordinator forwards all SVP documentation to the program’s Central Office, Department of Public Safety, the assigned case manager, and treatment provider. Upon arrival at the residential facility, the case manager meets with the face-to-face visit with the SVP, explains the

requirements, and activates the GPS tracking. The case manager makes the appropriate referrals based on the SVP's needs.

The SVP is assessed by the licensed sex offender treatment provider, who conducts group, individual, and family therapy sessions, prepares the individual treatment plan, prepares the SVP for polygraph examinations, conducts or coordinates the penile plethysmograph, and makes appropriate referrals.

Each year the SVP has the right to petition the court for an unauthorized release from the OSVPTP. Every two years the SVP is afforded a biennial review. The judge shall set a hearing if the judge determines at the biennial review that a requirement imposed on the person under this chapter should be modified or probable cause exists to believe that the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence. The state must prove beyond a reasonable doubt that the behavioral abnormality has not changed. If the burden of proof is met, the SVP civil commitment will continue.

If the SVP fails to comply with the order of commitment, the person may be charged with a 3rd degree felony, which may result in incarceration in the TDCJ-Correctional Institutional Division.

### **Statistics and Recidivism/Re-Offense Rates**

As of October 1, 2011, there were 224 sexually violent predators that have been committed under Health & Safety Code Chapter 841. Of the 224:

- 125 reside in the community;
- 99 are awaiting release from the Texas Department of Criminal Justice into the OSVPTP;
  - 4 of the 224 have been committed to a state hospital;
  - 1 of the 224 is placed at a state school;
- 0 absconders; and
- 7 are deceased and are not counted in the total number of commitments.

SVP Recidivism Rates: Recidivism rates are based upon information gathered from an arrest, a conviction, or incarceration. Recidivism may be based on a technical violation related to the civil commitment order, a sexual re-offense, or a new criminal offense.

To date, none of the SVPs committed to the program have been charged with or convicted of a new sexual crime, which represents a 0% sexual recidivism rate.

Thirty-eight percent, 68 SVPs, have committed a non-sexual offense and been returned to prison. Of the 68 SVPs:

- 68 had technical violations which were sentenced to the Texas Department of Criminal Justice-Correctional Institutional Division, State jail, served county time, or received probation.
- 4 of the 68 were charged with a new non-sexual felony criminal offense.

### **Civil Commitments by Fiscal Year**

Since civil commitment of the first SVPs in fiscal year (FY) 2001, the number of commitments remained relatively stable at 7-14 civil commitments per year through FY 2007. Additional funding for civil commitment trials was allocated to the Special Prosecutions Unit in FY 2010 and FY 2011, which resulted in 37 and 47 civil commitments respectively. Fifty trials are projected for FY 2012 and FY 2013.

### **Appropriations/Expenditures**

Texas is the only state that serves all SVPs in an outpatient setting, which has proven to be more economical than traditional inpatient programs. Fiscal year 2010 performance measures reflect that the OSVPTP cost the state an average of \$27,656 per SVP per year. Fiscal year 2011 performance measures reflect that the OSVPTP cost the state an average of \$28,045 per SVP per year.

The OSVPTP is funded via an appropriation to the Texas Comptroller of Public Accounts. An interagency contract between the two agencies defines the disbursements of the funds to DSHS. The total amount appropriated for FY 2009 was \$3,035,884 and total program costs for FY 2009 was \$2,069,861. The total amount appropriated for FY 2010 was \$3,183,676 and the total program costs for FY 2010 was \$2,820,952. The total amount appropriated for FY 2011 is \$4,070,817 and total program costs for FY 2011 was \$3,421,524.

The 82nd Legislature Regular Session House Bill 1 (General Appropriations Act) appropriated funds to the Texas Comptroller of Public Accounts Judiciary Section's 2012-2013 appropriation in Strategy D.1.9. The total amount appropriated for FY 2012 is \$4,037,687 and FY 2013 \$ 4,766,511.

### **Staff**

As of October 1, 2011, the program employed 1 executive director, 1 field staff manager, 1 court coordinator, 1 program specialist, 15 case managers, and 1 administrative assistant IV and expects to add three to five additional positions in FY 2012-2013 to supervise the increased SVP caseloads.

### **Major Court Decisions**

October 12, 2005. The U.S. Supreme Court denied the motion to hear In Re Commitment of Fisher's petition and finalizes the successful defense of the Texas SVP Act.

November 30, 2004. In Re Commitment of Fisher-Court of Appeals 13th District, the Texas Supreme Court upheld the constitutionality of the Texas SVP Act.